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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,408	11/21/2003	Louis C. Cosentino	12771.1USC1	3341

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Attention of Nicholas P. Johns
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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/719,408	Applicant(s) COSENTINO ET AL.	
	Examiner Michael C. Astorino	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 61-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 61-73, 75-86, 88 and 89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 74, and 87 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/4/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges the response filed by the applicant filed May 19, 2005.

Currently claims 61-89 are pending in the applicant, but claims 74 and 87 are withdrawn.

The applicant has transposed the status identifiers for 86 and 87, and should correct that in the next response.

Note to Applicant: The examiner has only listed the rejections of independent claims 61 and 77 since those are the only claims that have been argued by the applicant. The examiner has included the headings and introductory paragraphs of the prior art rejections for completeness. The applicant should refer back to the previous office action, for explanations of the rejections of the dependent claims if necessary.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 61, 63, 68, 71, 72, 73, 75, 76, 77, 78, 83, 85, 86, 88 and 89 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant).

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Claim 61. (New) A system for monitoring weight loss or weight management of a patient and establishing communication to a remote office regarding parameters of the patient, the communication system transferring information from a first location to a remote office location, the system comprising:

(a) a monitoring apparatus (10) at the first location comprising

a transducing device (10) generating an electronic signal representative of the patient's weight;

a processor (20) operatively coupled to the transducing device and arranged to process the electronic signals from the transducing device;

a communication device (modem via 20, column 6, lines 1-10 and column 7, lines 1-65) operatively coupled to the processor and to a communication network (LAN, WAN, or POTS);

an output device (40) operatively coupled to the processor arranged to present a series of questions to the patient, at least one of the questions relating to the patient's diet or exercise regimen ("did you exercise today?", column 4, line 46);

an input device (30) operatively coupled to the processor arranged to receive inputs from the patient in response to the queries; and

(b) a processing computer (figure 1) at the remote office location, the processing computer in communication with the monitoring apparatus, wherein the processing computer receives the electronic signal representing the patient's weight and also receives the inputs from the input device, wherein the processing computer issues an alert if it is

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determined that caregiver intervention is required. (the processing computer issues an alert via the nurse, when the nurse believes such intervention is required, column 7, lines 1-65)

Claim 77. (New) A method for monitoring weight loss or weight management of a patient and establishing communication to a remote office regarding parameters of the patient, the method comprising:

measuring the patient's weight with a transducing device generating an electronic signal representative of the patient's weight (10);

processing (20) the electronic signals representing the patient's weight with a processor operatively coupled to the transducing device;

presenting a series of questions to the patient, at least one of the questions relating to the patient's diet or exercise regimen with an output device coupled to the processor ("did you exercise today?", column 4, line 46);

receiving, in response to the queries, inputs from the patient with an input device operatively coupled to the processor (30, column 4, line 39-53)

communicating the patient inputs and the electronic signals representing the patient's weight to a remote processing computer with a communication device operatively coupled to the processor and to a communication network (modem via 20, column 6, lines 1-10 and column 7, lines 1-65); and

analyzing the patient inputs and the electronic signals representing the patient's weight with the remote processing computer to issue an alert if it is determined that caregiver

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intervention is required. (the processing computer issues an alert via the nurse, when the nurse believes such intervention is required, column 7, lines 1-65)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claim 61 above, and further in view of Melton, Jr. US Patent Number 6,038,465 A.

5. Claims 64, 65, 66, 67, 79, 80, 81, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant)

6. Claims 64, 65, 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claims 61 above, and further in view of Brown US Patent Number 5,997,476 A. (cited by applicant)

7. Claims 69, 70, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A (cited by applicant) as applied to claims 61, 68, 77 and 83 above, and further in view of Drinan et al 6,354,996 B1. (cited by applicant)

Response to Arguments

Applicant's arguments filed May 19, 2005 have been fully considered but they are not persuasive. The applicant's sole argument is that Lloyd et al. do not disclose issuing an alert on a system determination that caregiver intervention is required. However, the language claims 61 and 77 do not state issuing an alert on a *system determination* that caregiver intervention is required.

The relevant portion of the claim 61 states, "wherein the processing computer issues an alert if it is determined that caregiver intervention is required". In regards to Lloyd et al., although the caregiver determines the sending of the alert, the computer sends or "issues" the alert. Nothing in words of claim 66 requires that the processing computer makes such a determination, simply because no limitation exists as to who or what makes the determination. The only affirmative limitation is that the processing computer issues an alert, and Lloyd et al. teaches the issuance of an alert by the computer.

The relevant portion of the claim 77 states, "analyzing the patient inputs and the electronic signals representing the patient's weight with the remote processing computer to issue an alert if it is determined that caregiver intervention is required." In regards to Lloyd et al., the caregiver analyzes the patient inputs and the electronic signals representing the patient's weight with the remote processing computer to issue an alert if it is determined that caregiver intervention is required. Nothing in words of claim 77 requires that the processing computer provides the analysis/determination. The only affirmative limitation claimed Lloyd et al. teaches - the issuance of an alert by the computer based on the analysis.

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In the prior art rejection the examiner is using the broadest reasonable interpretation of the claimed language the rejections are proper. To overcome the novelty rejection the applicant should place the limitation of issuing an alert on a system determination that caregiver intervention is required, or something equivalent in the claims

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
June 1, 2005



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